

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KABO TOOLS CO., et al.,

Plaintiff(s),

vs.

PORAUTO INDUSTRIAL CO., LTD., et al.,

Defendant(s).

Case No. 2:12-cv-01859-LDG-NJK

ORDER GRANTING MOTION TO
 STAY DISCOVERY
 (Docket No. 26)

Pending before the Court is Defendants' motion to stay discovery pending resolution of their motion to dismiss for lack of personal jurisdiction. Docket No. 26. Plaintiffs filed a response and Defendants filed a reply. Docket Nos. 28, 30. The Court finds this motion appropriately resolved without oral argument. Local Rule 78-2. For the reasons discussed below, the motion is GRANTED and discovery in this matter shall be stayed pending resolution of the motion to dismiss.

The authority cited by the parties generally analyzes motions to stay discovery pending resolution of a motion to dismiss for failure to state a claim. *See, e.g., Twin City Fire Ins. Co. v. Employers Ins. Of Wausau*, 124 F.R.D. 652, 653 (D. Nev. 1989). While those cases provide some guidance here, courts are more inclined to stay discovery pending resolution of a motion to dismiss challenging personal jurisdiction because it presents a "critical preliminary question." *See, e.g., AMC Fabrication, Inc. v. KRD Trucking West, Inc.*, 2012 WL 4846152, *2 (D. Nev. Oct. 10, 2012). The filing of a Rule 12(b)(2) motion to dismiss "strongly favors a stay, or at a minimum, limitations on

1 discovery until the question of jurisdiction is resolved.” *Id.*

2 With that distinction in mind, the Court has taken a “preliminary peek” at the pending motion to
3 dismiss. Plaintiffs argue primarily that the exercise of personal jurisdiction is permissible because (1)
4 Mr. Hsu was served in this district, *see Burnham v. Superior Court of California*, 495 U.S. 604, 615-16
5 (1990), and Defendants directed the Accused Product into this district, *see Beverly Hills Fan Co. v.*
6 *Royal Sovereign Corp.*, 21 F.3d 1558, 1565 (Fed. Cir. 1994). These cases have limitations, however.
7 *See, e.g., Martinez v. Aero Caribbean*, 2012 WL 1380247, *3 (N.D. Cal. Apr. 20, 2012) (discussing
8 inapplicability of *Burnham* to corporate defendants and citing *Wenche Siemer v. Learjet Acquisition*
9 *Corp.*, 966 F.2d 179, 182 (5th Cir. 1992)). It appears that Plaintiffs may well prevail in opposing the
10 motion to dismiss, particularly with respect to Mr. Hsu, but “how the undersigned sees the
11 jurisdictional picture may be very different from how the assigned district judge will see the
12 jurisdictional picture.” *AMC Fabrication*, 2012 WL 4846152, at *4. Because the Court is not
13 convinced that the exercise of personal jurisdiction over Defendants will be found to be proper by the
14 district judge, it is appropriate to stay discovery pending the resolution of the motion to dismiss. *See*
15 *id.*

16 Plaintiffs also argue that a complete stay is not warranted because jurisdictional discovery
17 should be allowed. *See* Docket No. 28 at 6-7. In opposing the pending motion to dismiss, Plaintiffs
18 have requested that the district judge grant jurisdictional discovery if he finds that the record is not
19 sufficiently developed. *See* Docket No. 12 at 17. Thus, it is more prudent for the undersigned to defer
20 the question of whether jurisdictional discovery is necessary to the assigned district judge in his
21 determination of the merits of the pending motion to dismiss. *See AMC Fabrication*, 2012 WL
22 4846152, at *4.

23 For the reasons discussed above, the motion to stay discovery pending resolution of
24 Defendants’ motion to dismiss is hereby **GRANTED**.

25 IT IS SO ORDERED.

26 DATED: April 15, 2013

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NANCY J. KOPPE
United States Magistrate Judge